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Patrick J. Bonner (PB3352)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

James F. Simermeyer and James F. Simermeyer II,

Plaintiffs

07 Civ. 5842 (LAP)

-against-

AeroSur USA,

Defendant

**DEFENDANT'S STATUS  
REPORT**

Defendant AeroSur USA, Inc., by counsel, submits this Status Report pursuant to the Court's Order dated December 12, 2007.

In accordance with the Court's Order, the defendant's counsel, Kenneth Nankin, contacted counsel for plaintiffs by telephone and email on December 14, 2007, and again by telephone earlier today, so that the parties could submit a joint status report, but counsel for plaintiffs did not respond to these communications. (Plaintiff James F. Simermeyer, Esq. is representing himself and plaintiff James F. Simermeyer II, his son, in this case.)

On June 20, 2007, defendant removed this case from the Civil Court of the City of New York, County of New York. The next day, defendant filed its motion to dismiss the complaint pursuant to Rule 12(b)(6) and supporting memorandum of law. The undersigned has not received plaintiffs' opposition to this motion, and the docket indicates that no opposition has been filed.

On August 31, 2007, counsel for plaintiffs informed Mr. Nankin that plaintiffs would be seeking leave from the Court to file an amended complaint. On September 11, 2007,

Mr. Nankin authorized counsel for plaintiffs to represent to the Court that defendant would not oppose the motion for leave to file an amended complaint but that defendant reserved all defenses to the amended complaint, including without limitation the defense that the claims in the amended complaint are preempted by the Montreal Convention, and indicated that defendant would probably assert that defense by filing a motion to dismiss the amended complaint. Over three months later, the undersigned have not received plaintiffs' motion for leave to file an amended complaint, and the docket indicates that no such motion has been filed.

Defendant respectfully requests that the Court rule on defendant's pending motion to dismiss.

Dated: December 17, 2007  
New York, New York

Respectfully submitted,  
FREEHILL HOGAN AND MAHAR, LLP  
Attorneys for Defendant AeroSur USA, Inc.

By:



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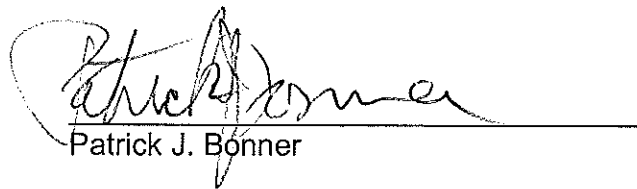
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of December, 2007, I served the foregoing Defendant's Status Report on plaintiffs by delivering a copy thereof by first class U.S. mail, postage prepaid, to counsel for plaintiffs at the following address:

James F. Simermeyer, Esq.  
101 Avenue of the Americas  
15<sup>th</sup> Floor  
New York, NY 10013



Patrick J. Bonner